

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 27.03.2015

Delivered on : 26.06.2015

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR
S.A.No.624 of 2007
and
M.P.No.1 of 2007

1.S.J.S. Paul

2.M/s.Billy Engineering
Enterprises Pvt. Ltd.
Rep. by its Managing
Director
762 Tiruvottiyur High Road
Chennai - 81 ... Appellants/ Defendants 1 & 2

-Vs-

1.R.M.Thangapalam

2.Pachaiyappa's Trust
Rep. by its Secretary
21 Harrington Road
Chennai-31

3.Corporation of Chennai
Rep. by its Commissioner
Ripon Bldgs., Chennai-3 ... Respondents/ Plaintiff /
Defendants 3 & 4

Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree of the Additional District Judge, Fast Track Court No.II, Chennai dated 17.10.2006 made in A.S.No.347 of 2005 reversing the judgment and decree of the learned XI Assistant Judge, City Civil Court, Chennai dated 08.11.2004 made in O.S.No.7716 of 1999.

For Appellants : Mr.K.V.Sundararajan

For Respondents : Mr.A.Palaniappan for R1
Mr.R.Dhandapani for R2
Mr.S.Saravanan for R3

J U D G M E N T

This second appeal has arisen out of a judgment and decree of the Additional District Judge (Fast Track Court No.II), Chennai dated 17.10.2006 made in A.S.No.347 of 2005.

2.R.M.Thangapalam, the first respondent in the second appeal filed a suit in O.S.No.7716/2009 on the file of the XI Assistant Judge, City Civil Court, Chennai against the appellants in the second appeal arraying them as defendants 1 and 2 and the respondents 2 and 3 in the second appeal arraying them as defendants 3 and 4 for the following reliefs: (a) a declaration that the first respondent herein/plaintiff is the absolute owner of the superstructure bearing door No.762 Part, Tiruvottiyur High Road, Old Washermanpet, Chennai - 81 and also the holder of the leasehold right in respect of the land; (b) a direction to the appellants herein/defendants 1 and 2 to deliver vacant possession of the said premises; (c) an injunction restraining the appellants/defendants 1 and 2 from putting up any construction in the premises; and (d) a direction to the appellants/defendants 1 and 2 to pay Rs.1,80,000/- towards past damages and for payment of future damages payable till delivery of possession.

2. The said prayers came to be made on the basis of the following plaint averments:

i) The land comprised in R.S.No.4949(Part) measuring 7260 sq.ft. forms part of Rajathiammal estate account and it belongs to Pachaiyappa's Trust, the second respondent herein/third defendant. The said property as a vacant site had been leased out to one S.S.Gupta, who was also known as L.Gupta @ L.C.Gupta son of R.S.Gupta on a monthly rent and the said lease commenced from time immemorial. The said Gupta, with his own funds erected superstructure and he was in possession and enjoyment of the same on his own right subject to payment of land rent to Pachaiyappa's Trust (2nd respondent/3rd defendant). He inducted the appellants/defendants 1 and 2 as tenants under him in respect of a portion measuring 5,000 sq.ft. Thereafter, the said Gupta executed a Deed of Transfer in favour of the first respondent/plaintiff in respect of a portion of said property measuring 2,260 sq.ft. and he also arranged for the attornment of tenancy by the appellants/defendants 1 and 2 in favour of the first respondent/plaintiff in respect of the remaining portion measuring 5,000 sq.ft. Pursuant to the said transfer effected by Gupta, the first respondent/plaintiff was in receipt of rents from the appellants/ defendants 1 and 2. He effected improvements and the second respondent/third defendant, namely Pachaiyappa's Trust recognised the first respondent/plaintiff as a tenant in respect of the entire land. The appellants/defendants 1 and 2, who paid the rent up to the month of November 1992 to the first

respondent/plaintiff thereafter stopped payment of rent and they claimed that the title in respect of the portion in their occupation stood vested with them. When the appellants/defendants 1 and 2 approached the second respondent/third defendant Trust for recognising them as persons having leasehold right, the said request was rejected by Pachaiyappa's Trust and the title of the first respondent/plaintiff to the superstructure and his status as tenant in respect of the land came to be recognised by the 2nd respondent/third defendant, in its proceedings R.O.C.No.7910/94/C1 dated 01.08.1995. The Trust issued a No Objection Certificate in C1/3130/97 dated 09.09.1997 in favour of the first respondent/plaintiff.

ii) While so, without the knowledge of the first respondent/plaintiff, the appellants/defendants 1 and 2 approached the fourth respondent, namely Corporation of Chennai, for sub division of the plaint schedule property which formed part of door No.761 as door No.761/1. The Corporation of Chennai unlawfully effected a sub division and assigned sub division No.762/1 in respect of an extent of 5000 sq.ft. besides assigning door No.762/2 in respect of the remaining portion measuring 2260 sq.ft. Such a sub division made without any enquiry is void ab initio. Under the said circumstances alone, the Corporation of Chennai is also impleaded as a party to the suit.

iii) The first respondent/plaintiff is the absolute owner of the portion in the occupation of the appellants/defendants 1 and 2. When the first respondent/plaintiff issued a notice to them on 24.12.1996 calling upon them to surrender possession of the said property, they refused to do so by their letter dated 31.12.1996 and they also set up hostile attitude towards the first respondent/plaintiff. Besides the appellants/defendants 1 and 2 also made attempts to put up unlawful construction. Hence the first respondent/plaintiff was constrained to file the suit for the above said reliefs.

3.The written statement filed by the first appellant/first defendant was adopted by the second appellant/second defendant. In addition, the second appellant/second defendant filed an additional written statement. The sum and substance of the averment made in the written statement and additional written statements are as follows:

An extent of 7200 sq.ft. of land originally belonged to one Rajathiammal. She effected a gift settlement in favour of Pachaiyappa's College Trust and the same came into effect on the death of Rajathiammal. However, during her life time itself, Rajathiammal leased out the said property to one Umapathy for a period of 99 years. Out of total extent of 7200 sq.ft leased out by Rajathiammal, the original lessee Umapathy inducted one L.C.Gupta as sub lessee in respect of 6000 sq. ft., and the second appellant/second defendant was inducted as a sub lessee in respect

of 1000 sq.ft., Out of the 6000 sq., ft he had got on lease from Umapathy, the above said Gupta in turn leased out a portion measuring 3600 sq., ft., out of the to the second appellant/second defendant. Thus, the second appellant/second defendant got possession of $3600 + 1000 = 4600$ sq., ft as lessee under L.C.Gupta and Umapathy respectively. Thereafter, the second appellant/second defendant was in possession of the said land for more than 20 years after having put up a temporary structure therein. During 1991, the second appellant/second defendant put up a permanent structure and the same was assessed by the Corporation of Chennai, in his name. The contrary averment made in the complaint to the effect that it was Gupta who put up the construction is false. Gupta who was in possession of the remaining extent of 2400 sq., ft., alone leased out a small portion measuring $27' \times 40' = 1080$ sq., ft., to the first respondent/plaintiff. Even in respect of that small portion of 1080 sq. ft. the first respondent/plaintiff was a tenant under L.C.Gupta. However, he created some documents as if he was in possession of the entire extent of 2400 sq.ft., after dispossessing his landlord Gupta even from the remaining portion measuring 1320 sq., ft., retained by him. Hence, Gupta lodged a criminal complaint which resulted in the criminal case resulting in imposing a fine of Rs.300/- on the first respondent/plaintiff on his pleading guilty. The plaint averment that Gupta put up construction in 5000 sq., ft of leasehold land is incorrect as he had inducted the second respondent/second defendant as a sub- lessee in respect of an extent of 3600 sq.,ft., out of 6000 sq., ft he had got on lease from Umapathy. The assignment of leasehold right made by Gupta in favour of the first respondent/plaintiff was only in respect of a vacant land measuring 1080 sq., ft. The original lessee Umapathy himself had covered the entire land with a compound wall to a height of 12 feet. As such by no stretch of imagination, the first respondent/plaintiff can claim to be the landlord of the appellants/defendants. Even the alleged recognition of the first respondent/plaintiff as lessee by Pachaiyappa's College Trust shall not have the effect of nullifying the right of the appellants/defendants 1 and 2 in respect of the portion in their occupation as lessees. Hence, the suit filed by the first respondent/plaintiff should be dismissed with costs.

4. Based on the pleadings of the parties, the following issues were framed by the trial court:

- "1. Whether the plaintiff is entitled to the relief of declaration as prayed for?
2. Whether the defendants 1 and 2 are bound to deliver vacant possession of the suit property?
3. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for?
4. Whether the plaintiff is entitled to recover

a sum of
defendants 1 and 2?

Rs.1,80,000/- as damages from

5. To what other reliefs?"

5. Based on the issues framed by the trial court, the parties went for trial. In the trial, only one witness was examined as PW1 and 26 documents were marked as Exs.A1 to A26 on the side of the plaintiff. On the side of the defendants 1 and 2, DW1 was examined and nine documents were marked as Exs.B1 to B9. On behalf of the third defendant, namely Pachaiyappa's College Trust, DW2 was examined and one document was marked as marked as Ex.B10.

6. The learned trial judge on an appreciation of evidence held that the plaintiff was not entitled to any relief as sought for and accordingly dismissed the suit without cost by judgment and decree dated 08.11.2004. Aggrieved by and challenging the said decree of the trial court dated 08.11.2004, the first respondent herein/plaintiff preferred an appeal on the file of the lower appellate court as A.S.No.347/2005. The learned lower appellate judge, by a judgment and decree dated 17.10.2006 allowed the appeal, set aside the decree of the trial Court dismissing the suit and decreed the suit as prayed for granting the reliefs of declaration, recovery of possession and direction for payment of past and future damages as prayed for in the plaint. As against the said decree of the lower appellate court dated 17.10.2006, the present second appeal has been filed on various grounds set out in the memorandum of grounds of second appeal.

7. The second appeal came to be admitted on 05.07.2007 identifying the following to be the substantial questions of law involved in the second appeal:

Substantial Questions of Law:

1. Whether the lower appellate court is correct and justified in relying on Ex.A1, an unregistered document to uphold plaintiff's title and whether can it be used for any purpose being unregistered?

2. Whether the lower appellate court is correct and justified in decreeing the suit for Rs.1,80,000/- without any evidence and proof of the claim?

3. Whether the lower appellate court was right in relying upon Exs.A1 and A2 in view of the provisions of the Registration Act and Transfer of Property Act?

8. The arguments advanced by Mr.K.V.Sundararajan, learned counsel for the appellants, by Mr.A.Palaniappan, learned counsel for the first respondent, by Mr.R.Dhandapani, learned counsel for the second respondent and by Mr.S.Saravanan, learned counsel for the

third respondent, were heard. The judgments of the courts below and other materials available on record were also perused.

9. An extent of 7260 sq.ft. of land comprised in R.S.No.4049/Part at old door No.765 new door No.762, Tiruvottiyur High Road, New Washermenpet, Chennai-600081 belongs to the second respondent Pachaiyappa's Trust, as the said property had been settled by one Rajathiammal under Settlement Deed dated 11.07.1995, a copy of which has been marked as Ex.A26. The Pachaiyappa's Trust (second respondent/third defendant) leased out the said land as vacant site to one S.S.Gupta @ L.Gupta. The said Gupta put up a super structure in part of the said land. He had been authorised by the landlord, namely the second respondent/third defendant Pachaiyappa's Trust to sublet the same. Claiming that after erecting the superstructure with his own funds, the above said Gupta was in possession and enjoyment of the suit property and he in turn executed a deed of transfer on 23.12.1993 and handed over vacant possession of a portion of 2,200 sq.ft. in the said property to the first respondent/plaintiff; that the appellants herein/defendants 1 and 2, who were tenants in respect of the remaining portion of 5,000 sq.ft. encroached upon the said property alone; that the first respondent/plaintiff, pursuant to the said transfer, got possession of the said property measuring 2,260 sq.ft. and made improvements thereon and that in respect of the portion measuring 5000 sq.ft. leased out to the appellants/defendants 1 and 2 as sub lessees, the appellants/defendants had been paying rent at the rate of 5,000/- up to November 1993 to the first respondent/plaintiff; that thereafter the appellants/defendants 1 and 2 stopped payment of rent and claimed title in themselves for the portion in their occupation and that therefore the possession of the appellants/defendants 1 and 2 thereafter would tantamount to possession of a trespasser, the first respondent/plaintiff chose to file the suit for a declaration that he had absolute title to the suit property, namely the building and the leasehold right subject to his obligation to pay the ground rent to the second respondent/third defendant Trust, for recovery of possession, for an injunction restraining the appellants/defendants 1 and 2 from putting up any construction and for damages for use and occupation, past and future.

10. The prayer made by the first respondent/plaintiff was resisted by the appellants/defendants 1 and 2 contending that the property measuring 7260 sq.ft. bearing door No.762, T.H.Road, New Washermanpet, Chennai - 81 originally belonged to one Mrs.Rajathiammal and she settled the same in favour of Pachaiyappa's Trust; that the Trust was to take effect after the death of said Rajathiammal; that during her life time itself, the said Rajathiammal leased out the said property to one Umapathy for a period of 99 years and that the said Umapathy leased out 6000 sq.ft. to Gupta and the balance extent of 1200 sq.ft. was leased out by Umapathy to the first appellant/first defendant firm. It was also

contended that out of 6000 sq.ft. of land which was leased out to Gupta by Umapathy, Gupta leased out 3600 sq.ft. to the first appellant/first defendant and that thus the first appellant/first defendant is in possession of altogether 4800 sq.ft. of land. It was further contended that the second appellant/second defendant put up a temporary structure twenty years prior to the filing of the suit and during the year 1991, he put up a permanent structure which came to be assessed by the Corporation in the name of the second appellant/second defendant. It was further contended by them that out of 2400 sq.ft. of land retained by Gupta, a small portion measuring 27' x 40' = 1080 sq.ft. alone was leased out by Gupta to the first respondent/plaintiff; that some how or other, the first respondent/plaintiff created documents as if he was in possession of the entire portion retained by Gupta, namely 2,400 sq.ft. and the same led to the said Gupta giving a criminal complaint in which the first respondent/plaintiff pleaded guilty and was fined Rs.300/-. Thus according to the appellants/defendants 1 and 2, the claim of the first respondent/plaintiff was baseless, unsustainable and liable to be rejected.

11. It is not the case of the first respondent/plaintiff that he became a sub tenant under Gupta. On the other hand, he would contend that he purchased the superstructure put up by Gupta along with his leasehold right in respect of the site and thus he became a landlord of the appellants/defendants 1 and 2 in respect of the portion leased out by Gupta to the appellants/defendants 1 and 2. The first respondent/plaintiff claims to have purchased the superstructure allegedly put up by L.G.Gupta along with the entire extent of the site, namely 7260 sq.ft. (according to the appellants/defendants and to the extent is only 7200 sq.ft) The said contention of the first respondent/plaintiff is stoutly disputed by the appellants/defendants 1 and 2. They contend that the original owner Rajathiammal herself leased out the entire land measuring 7200 sq., ft. to one Umapathy for a period of 99 years and the said Umapathy leased out only an extent of 6000 sq.ft. to Gupta and the balance extent of 1200 sq.ft. was leased out by Umapathy in favour of the appellants/defendants 1 and 2. It is also their contention that out of 6000 sq.ft. he got on lease from Umapathy Gupta leased out an extent of 3600 sq.ft. to the appellants/defendants 1 and 2 retaining only 2400 sq.ft. It was also contended that out of the 2400 sq.ft. retained by the said Gupta only an extent of 1080 sq.ft. was leased out by him to the first respondent/plaintiff. In the light of the above said pleadings, the burden is on the first respondent/plaintiff to prove that he purchased leasehold right in respect of the entire extent of 7260 sq.ft. of land together with the superstructure allegedly put up by Gupta.

12. In support of his case, the first respondent/plaintiff examined himself as PW1 and no other witness was examined on his side. Though the Junior Accountant of Pachaiyappa's Trust (2nd

respondent/3rd defendant) supported the case of the first respondent/plaintiff that he became lessee under the Trust in respect of 7260 sq.ft. of land and no leasehold right was given to the first appellant/first defendant, during cross examination he pleaded absence of knowledge as to whether Umapathy was given 99 years lease by Rajathyammal. His evidence in cross examination is skeptical as to whether the property had been leased out to one Umapathy son of R.Mariappa Nadar for 99 years. Whatever might be the evidence of DW2, it is the case of the first respondent/plaintiff that Gupta was the lease holder in respect of the entire extent of 7260 sq.ft. and he transferred the leasehold right together with title in respect of the super structure put up by him in favour of the respondent/plaintiff under a sale deed dated 23.12.1993. The same came to be filed in another case and a certified xerox copy of the same has been produced and marked in this case as Ex.A1. It has been prepared as a Deed of sale conveying a small terraced house and a shed with cement sheet roof along with all electrical and other fittings and the leasehold right in respect of the land for a consideration of Rs.5,00,000/-. In the description of property, the measurement of the property has been shown as 120' x 60'= 7200 sq.ft. Since the said sale deed purported to convey the superstructure put up in the land permanently fitted and also the leasehold right which had been valued at Rs.5,00,000/-, it is a sale deed conveying immovable property, namely superstructure as well as a right for interest in the immovable property, namely leasehold right. Hence it is a document of which registration is compulsory as per Section 17(1) of the Registration Act, 1908. The suit has been filed for declaration of title to the superstructure and leasehold right in respect of the land for recovery of possession and consequential reliefs of injunction and mesne profits. For proof of such a claim the said document becomes inadmissible in view of non-registration as provided in Section 49 of the Registration Act, 1908. Therefore, the first respondent/plaintiff cannot rely on Ex.A1 in proof of his claim made in the suit.

13. According to the case of the first respondent/plaintiff, the defendants 1 and 2 are tenants in respect of an extent of 5000 sq.ft. and the superstructure standing thereon. According to the appellants/defendants 1 and 2, they became lessees under Umapathy in respect of 1200 sq.ft. and lessees under Gupta in respect of 3600 sq.ft; that thus they were lessees in respect of 4800 sq.ft. of land and that the superstructures standing thereon were put up by them. In fact the said superstructure came to be assessed for tax in the name of the second appellant/second defendant as evidenced by Ex.B3 (series). They have also produced Ex.B4 (series) as receipts for payment of ground rent to Gupta. Of course the rental receipts were issued in the year 1996, 1997 and 1998. Only thereafter, the suit came to be filed. Like the first respondent/plaintiff, the appellants/defendants 1 and 2 also rely on unregistered deed and hence inadmissible documents as lease deeds under which they got the

land in their possession on lease. The lease deeds relied on by the appellants/defendants 1 and 2 are Exs.B1 and B9. Ex.B9 is a certified copy of the registered sale deed executed by one Krishnamurthy son of Duraisamy Achary in favour of A.Mariappa Nadar son of Aiyamperumal Nadar creating a lease in favour of Marriappa Nadar for a period of 35 years commencing from 01.04.1968. The 35 years of lease would have come to an end only in 2003. But the appellants/defendants 1 and 2 rely on Ex.B1-lease deed dated 25.02.1990 to show that they got the land measuring 1200 sq.ft. from Umapathy son of Mariappa Nadar. Since Ex.B1 is also an unregistered lease deed purporting to lease out the property for a period of 10 years, it is a document registration of which is compulsory as per Section 17(1) of the Registration Act, 1908 and the same is inadmissible as provided under Section 49 of the Registration Act, 1908.

14.The creation of a lease in respect of the entire property in favour of Umpathy son of Mariappa Nadar for 99 years was not disputed by DW2. There is no evidence as to how the lease created in favour of Mariappa Nadar came to end. Though the appellants/defendants 1 and 2 were able to show that they became sub lessees under Umapathy son of Mariappa Nadar, simply because Ex.B1 is inadmissible in evidence, the first respondent/plaintiff, who approached the court for declaration of his title and consequential relief, cannot succeed pointing out the loopholes or weakness in the defence case of the appellants herein/defendants 1 and. The first respondent/plaintiff has to stand or fall on the strength of his own case.

15.As we have seen supra, the first and foremost document under which the first respondent/plaintiff claims to have derived title to the suit property, namely the sale deed dated 23.12.1993 marked as Ex.A1 cannot be taken into consideration, as the same is inadmissible for want of registration. The other documents relied on by the first respondent/plaintiff is Ex.A2, the letter dated 01.08.1995 issued by Pachaiyappa's Trust in response to the application made by the first respondent/plaintiff for transfer of tenancy in respect of the suit property in his favour. It is the proceedings of the Committee of Management dated 01.08.1995 accepting the request made by the first respondent/plaintiff in his application dated 18.11.1994 to transfer the tenancy in respect of the suit property in his favour on his payment of Rs.50,000/- as voluntary donation to the Trust and Rs.51,125/- towards arrears of rent. A perusal of the said document will show that the first respondent/plaintiff claimed that Gupta, the lessee of the land and himself did partnership business in scrap iron in the suit land in question measuring 7200 sq.ft. and he wanted the transfer of land tenancy in his favour on the premise that his partner Gupta decided to withdraw from the partnership business. This is quite contrary to the pleadings made by the first respondent/plaintiff. Nowhere in the

plaint, nor in the evidence, he has stated that he along with his vendor Gupta, ran a partnership business in scrap iron and due to the withdrawal of his partner Gupta, the land tenancy came to be transferred to him.

16. On the other hand, it was his contention that he purchased the superstructure as well as the tenancy right from the said Gupta under Ex.A14-letter dated 31.10.1996 issued to the Managing Director of the first appellant/first defendant. It is to the effect that the first defendant had sent a letter on 05.08.1996 that they were in possession of three grounds in door No.761 and 2 grounds in door No.762/1 Tiruvottiyur High Road. But, as per their records one K.Ramasamy Nadar was the tenant in respect of the premises bearing door No.761, Tiruvottiyur High road and premises bearing door No.762 measuring 7200 sq.ft. and the door No.762/2 had been allotted to the first respondent/plaintiff Thangapalam and that hence all the three, namely the first appellant/first defendant, K.Ramasamy and the first respondent/plaintiff were asked to appear for an enquiry before the Committee on 06.11.1996. Pursuant to the said communication, the first respondent/plaintiff seems to have issued a notice under Ex.A5 to Pachaiyappa's Trust. Thereafter, Pachaiyappa's Trust seems to have issued a No Objection Certificate under Ex.A6 dated 09.09.1997 stating that the land portion in premises bearing door No.762 measuring 7260 sq.ft. is owned by Pachaiyappa's Trust and Rajathiammal Estate and that the Trust had no objection for levying property tax in respect of the superstructure on the above land on the first respondent/plaintiff, who was the tenant in respect of the said property.

17.It shall be noticed that there is a discrepancy in extent between Ex.A2 and A6. As per Ex.A2, the extent of land is 7200 sq.ft. whereas as per Ex.A6 it is shown as 7260 sq.ft. The said discrepancy has not been explained. Ex.A7 is a copy of notice dated 02.07.1997 issued to the Commissioner, Corporation of Chennai and Assistant Revenue Officer of the Corporation of Chennai to rectify the mistake in the tax assessment regarding door number and Ex.A8 is the reply notice sent by the counsel for the appellants. They made a statement that an extent of 5000 sq.ft. was in the physical possession of the appellants and the land had been leased out in favour of the appellants by Gupta and Umapathy son of Mariappa Nadar and that the act of the first respondent/plaintiff in getting a lease of the land without physical possession was not valid in law. The other documents came into existence subsequently and they will not be enough to prove that the first respondent/plaintiff took possession of the portion in the occupation of the appellants/defendants 1 and 2. They are also not enough to show that the first respondent/plaintiff got possession of the entire extent of the suit land.

18. There is not even a scrap of paper and total absence of reliable evidence to show that the appellants/defendants 1 and 2 whose possession of 5000 sq.ft. of land and the superstructure standing thereon has been admitted by the first respondent/plaintiff, attorned the tenancy recognising the first respondent/plaintiff to be their landlord. There is no evidence to show that at any point of time the appellants paid any rent either for the land or for the superstructure to the first respondent/plaintiff. In fact the plaintiff claims to have purchased the superstructure and the leasehold right only on 23.12.1993. But he would contend that the rent up to November 1993 was paid by the appellants/defendants 1 and 2 to the first respondent/plaintiff and that thereafter they committed default in payment of rent and claimed title on themselves. The fact remains that at no point of time, the first respondent/plaintiff was accepted to be the lessor and at no point of time, the appellants paid rent to him. The consistent stand of the appellants/defendants 1 and 2 is that they became tenants in respect of vacant land under Umapathy and Gupta for a total extent of 5000 sq.ft. and the superstructure standing thereon were put up by them. The first respondent/plaintiff who claims to have put up construction after demolishing the construction that existed at the time of his alleged purchase has not proved how the appellants/defendants 1 and 2 came to be in possession of 5000 sq.ft. of land and the superstructure put up therein. The preponderance of probabilities will show that the case of the first respondent/plaintiff has not been substantiated. The lease created in favour of Mariappa Nadar under Ex.B9 has not been proved to be terminated. Though the appellants/defendants 1 and 2 rely on a unregistered deed marked as Ex.B16 inadmissible in law for want of registration, since they are admittedly in possession they can protect their possession as against the whole world except the true owner or a person having better title or right.

19. In this case, the first respondent/plaintiff claiming title to the suit property has not proved his case by reliable evidence by preponderance of probabilities. Under such circumstances, the learned trial judge, on proper appreciation of facts and applying correct principles of law took a correct decision to dismiss the suit and passed a decree dismissing the suit filed by the first respondent/plaintiff without cost. The learned lower appellate judge in an erroneous re-appreciation of evidence and application of the principles of law and due to such wrong approach has come to a erroneous conclusion that the first respondent/plaintiff was entitled to the relief sought for in the plaint. The lower appellate court was wrong in interfering with and reversing the well considered judgment and decree of the trial court. This court does have no hesitation in holding that the decree of the lower appellate court is defective and discrepant and the same deserves to be set aside.

20.In the result, the second appeal is allowed. The decree of the lower appellate court dated 17.10.2006 made in A.S.No.347 of 2005 is set aside. The decree of the trial court dated 08.11.2004 made in O.S.No.7716 of 1999 shall stand restored and confirmed. However, there shall be no order as to cost. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

asr

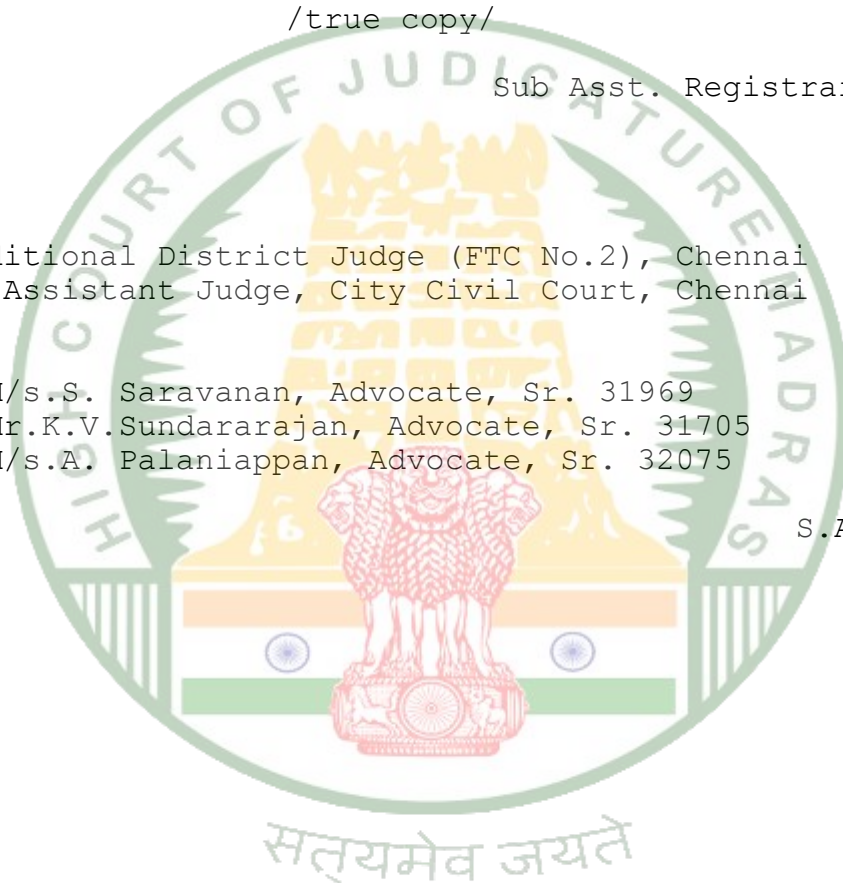
To

- 1.The Additional District Judge (FTC No.2), Chennai
- 2.The XI Assistant Judge, City Civil Court, Chennai

- 1 cc to M/s.S. Saravanan, Advocate, Sr. 31969
1 cc to Mr.K.V.Sundararajan, Advocate, Sr. 31705
1 cc to M/s.A. Palaniappan, Advocate, Sr. 32075

S.A.No.624 of 2007

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